

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DUKE ENERGY OHIO, INC.	:	
	:	NO. 1:07-CV-00012
Plaintiff,	:	
	:	
	:	
v.	:	OPINION AND ORDER
	:	
	:	
TORRANCE SMITH,	:	
	:	
Defendant.	:	

This matter is before the Court on the Report and Recommendation in which the assigned Magistrate Judge recommended that Plaintiff's motion to remand be granted, and that this case be remanded to Hamilton County Municipal Court (doc. 13). For the reasons indicated herein, the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety.

Plaintiff Duke Energy Ohio, Inc. instituted this action against Defendant Torrance Smith in Hamilton County Municipal Court on October 23, 2006, and Defendant was served the complaint three days later (Id.). On November 22, 2006, Defendant filed an answer to discovery and a motion to countersuit (Id.). Then, on January 5, 2007, Defendant filed a notice of removal to this Court (Id.). On January 22, 2007, Plaintiff made a motion to remand, based on Defendant's failure to timely file his notice and/or properly demonstrate federal jurisdiction (Id.).

The Magistrate Judge, after reviewing, the relevant law,

found Plaintiff's motion well-taken (Id.). The Magistrate Judge found that Defendant failed to comply with 28 U.S.C. 1446(b), requiring a defendant to file a notice of removal within thirty days of receiving the initial pleading (Id.). Further, the Magistrate Judge found that Defendant's basis for federal jurisdiction, his countersuit, was improper (Id., citing among others, Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987)). The Court, having fully considered this matter, finds the Magistrate Judge's Report and Recommendation well-reasoned, thorough, and correct.

The Parties were served with the Report and Recommendation and were therefore afforded proper notice of the Magistrate Judge's Report and Recommendation required by 28 U.S.C. § 636(b)(1)(C), including that failure to file timely objections to the Report and Recommendation would result in a waiver of further appeal. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Neither Party filed any objections thereto within the ten days provided for by Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1)(C).

Having reviewed this matter de novo pursuant to 28 U.S.C. §636(b), the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety (doc. 13), and thereby GRANTS Plaintiff's Motion to Remand (doc. 6), and REMANDS this case to Hamilton County Municipal Court. Further, because the Court lacks

jurisdiction over this matter, Defendant's motions to stay, for counterclaim, and for judgment on the pleadings are DISMISSED without prejudice (docs. 8, 10, 12).

SO ORDERED.

Dated: September 19, 2007

/s/ S. Arthur Spiegel

S. Arthur Spiegel

United States Senior District Judge